

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver of
CITITRUST,

90 CV 4409

Plaintiff,

MEMORANDUM

AND

-against-

ORDER

HAITRAM S. PERSAUD, JEAN PERSAUD,
THE CITY OF NEW YORK, CITY OF NEW
YORK ENVIRONMENTAL CONTROL BOARD,
ROOPNARINE SUJNARINE, GOMATI
SURJNARINE, and JOHN DOE No. 1
through JOHN DOE No. 48,

Defendants.

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FERBER GREILSHEIMER CHAN & ESSNER
(Jeffrey R. Bergida, of counsel)
530 Fifth Avenue
New York, NY 10036-5101
for plaintiff and RPT Metro Equities Ltd.

EDWARD S. KANBAR, ESQ.
150 West 56th Street, #3310
New York, NY 10019
for defendants Haitram S. Persaud and
Jean Persaud.

PAUL A. CROTTY, CORPORATION COUNSEL
(Barry E. Zweigbaum, of counsel)
100 Church Street
New York, NY 10007
for defendant New York City.

NICKERSON, District Judge:

Cititrust, a Connecticut bank, brought this action on December 21, 1990 to recover on a loan agreement and a note pursuant to which defendants Haitram S. Persaud and Jean Persaud (the Persauds) borrowed \$400,000, and to foreclose on a mortgage entered into as security for the repayment of that loan. Before this court is a Report and Recommendation by Magistrate Judge A. Simon Chrein.

The complaint alleges that Cititrust loaned the Persauds \$400,000. In return, the Persauds agreed to repay the loan in monthly installments of \$600 beginning May 13, 1988, with a "balloon" payment of the remainder on April 13, 1993. As security for the loan, the Persauds executed a mortgage on three tracts of real property located in Brooklyn, respectively, 560 Seventh Avenue, Brooklyn, New York, 197 Adelphi Avenue, Brooklyn, New York, and 275 23rd Street, Brooklyn, New York. The loan agreement and note, which outline the terms of the loan and the consequences of default, are contained in the record, as is the mortgage agreement.

According to the complaint, the Persauds complied with the terms of the agreements and tendered the appropriate payments from May 13, 1988 through May, 13, 1990, at which time they ceased making payments. On or about October 2, 1990, Cititrust informed the Persauds that it considered the loan to be in default. Cititrust filed the present action on December 21, 1990. On January 5, 1993, the court appointed Federal Deposit Insurance Corporation as receiver of Cititrust and amended the caption accordingly.

This court entered a default judgment against the Persauds on September 29, 1995 and referred the calculation of damages to Magistrate Judge A. Simon Chrein for report and recommendation. The court also asked the magistrate judge to recommend how the subject property should be sold.

Magistrate Judge Chrein issued a Report and Recommendation on June 19, 1996 in which he (1) rejected the Persauds' arguments that the court lacked subject matter jurisdiction over this action; (2) denied the Persauds' request that he set aside the

default judgment absent a motion pursuant to Rule 55(c); (3) recommended that the court award damages in the amount of \$617,879.63 plus interest accrued since December 19, 1995; and (4) did not have sufficient information from which to formulate a proper recommendation regarding whether the property in question should be sold as one parcel, but recommended that plaintiff, to the extent it participates in the sale of the property, take all reasonable steps to maximize return from the sale or sales.

On July 8, 1996 the Persauds filed an objection to the Report and Recommendation arguing that Magistrate Judge Chrein did not respond to their argument that plaintiff is not the proper party in interest in this action. On July 25, 1996 the Persauds also filed a motion to set aside or vacate the default judgment pursuant to Rule 55(c) or 60(b) of the Federal Rules of Civil Procedure, and to dismiss the action for lack of subject matter jurisdiction.

On March 5, 1997 the court denied the motion to set aside or vacate the default judgment, and approved

and adopted Magistrate Judge Chrein's recommendations as to the amount of damages, subject to the potential set-off resulting from the disposition of the property in question. Magistrate Judge Chrein found that the Persauds' liability consisted of \$385,600.00 in unpaid principal, \$211,973.22 in accrued interest through December 19, 1995 plus additional interest calculated in the same manner, and late fees in the amount of \$20,306.41.

The court referred the case to Magistrate Judge Chrein for further report and recommendation on (1) the present ownership of the mortgage or mortgages, (2) the possible substitution of plaintiff or joinder of parties, (3) whether and how the underlying property should be sold, and (4) how the disposition of the property should affect the calculation of damages.

Magistrate Judge Chrein issued a Report and Recommendation on January 6, 1998. The Persauds filed a timely objection to the Report and Recommendation on January 21, 1998, stating that their objections were

"set forth in the papers and pleadings previously filed in this action."

Magistrate Judge Chrein found that RPT Metro Equities Limited Partnership (RPT) should be deemed the owner of the mortgage. The Persauds object to this finding on the basis that plaintiff had not disclosed the full chain of title, omitting an assignment of the mortgage to Plaza Financial Corporation (Plaza), an additional assignment of a mortgage on 197 Adelphi Street and 560 Seventh Avenue to a Tomo Corporation (Tomo), and an assignment of a mortgage on 275 23rd Street to Remington Holding Corporation (Remington).

The Magistrate Judge considered these objections in detail and found them to be without merit. The record supports his finding that the transaction with Plaza was never completed, and therefore does not appear in the chain of title. The Magistrate Judge further found that the mortgages assigned to Tomo and Remington differed from the mortgage executed by Haitram Persaud and at issue in this action. The record reflects that these mortgages, filed in Reel

2206 at page 1613 and Reel 1957 at page 1922 respectively, are not the same as the mortgage in question here, which is filed in Reel 2206 at page 983. The court concludes that RPT is the current owner of the mortgage at issue.

The Persauds also raised the objection that the chain of title did not track all of the necessary documents, including the loan agreement, the promissory note, and the mortgage. The Magistrate Judge found that each of the assignments on its face stated that the mortgage was being assigned "[t]ogether with the debt, notes or other obligation therein described and the money due or to become due thereon, without recourse" or similar language. The objection is therefore without merit.

The Persauds also argue that they would be prejudiced if RPT is substituted as plaintiff. The Persauds have been on notice of RPT's claim that it was the current owner of the mortgage since August 1996. The court finds there would be no prejudice to the

Persauds. RPT is substituted as plaintiff in this action.

The Persauds submitted no counter-proposals on the issue of whether and how the properties should be sold. The court adopts Magistrate Judge Chrein's recommendation that the properties should be sold as three separate parcels in a single auction. The proceeds shall be applied against the \$617,879.63 which the court has previously determined the plaintiff is entitled to. The Persauds' objections on this score have already been considered and rejected by the court in its March 5, 1997 order.

The court approves and adopts in full the Report and Recommendation of Magistrate Judge Chrein that (1) RPT be deemed the present holder of the mortgage, (2) RPT be substituted as a real party in interest, (3) the properties be sold in three separate parcels in a single auction, and (4) the proceeds be used to offset the \$617,879.63 amount already determined by the court as due from the defendants. The Clerk of Court is

directed to enter judgment in accordance with the
Report and Recommendation.

So ordered.

Dated: Brooklyn, New York
June 2, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.